



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

April 8, 2009

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Ms. Julie L. Tennant-Caine
Director, Division of Victim Services
Wyoming Office of the Attorney General
122 West 25th Street, Herschler Bldg., 1W
Cheyenne, WY 82002

Re: Compliance Review of the Wyoming Office of the Attorney General
(09-OCR-0087)

Dear Ms. Tennant-Caine:

On June 18, 2007, the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) initiated a compliance review of all State Administering Agencies, including the Wyoming Office of the Attorney General (OAG), in accordance with federal regulation 28 C.F.R. § 42.206. The focus of the review was on OAG's compliance with applicable federal civil rights laws along with OAG's monitoring procedures for ensuring the compliance of subrecipients with these laws. Of particular interest to the OCR was OAG's implementation and monitoring of DOJ's regulations, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38 [hereinafter Equal Treatment Regulations].

On February 4, 2009, the OCR conducted an onsite visit to OAG's offices in Cheyenne, Wyoming to interview Division of Victim Services (DVS or Division) representatives and to conduct a training program for DVS management and program staff about the federal civil rights laws that the OCR enforces. The OCR would like to thank you for assisting OCR attorney Christopher Zubowicz during his onsite visit.

In regard to the limited scope of this compliance review, the OCR concludes that the OAG appears to be taking measures to comply with the federal civil rights laws that the OCR enforces. Nonetheless, we have reservations about the adequacy of the Division's (1) guidance to subrecipients about their legal obligations regarding applicable federal civil rights laws, (2) onsite monitoring of subrecipients, (3) training and technical assistance for subrecipients, and (4) complaint procedures for responding to certain discrimination allegations. The following Compliance Review Report includes recommendations for improving OAG's methods for monitoring the civil rights compliance of subrecipients.

Compliance Review Report: Overview and Recommendations

I. Overview

This Compliance Review Report first examines DVS's procedures for monitoring whether subrecipients are meeting their obligations to comply with the federal civil rights laws that are a condition for receiving federal financial assistance. The Report then focuses on the Division's implementation of DOJ's Equal Treatment Regulations.

A. General Monitoring Procedures to Ensure Subrecipient Compliance with Applicable Federal Civil Rights Laws

Recipients of federal financial assistance from the OJP are responsible for certifying that contractors and subrecipients under DOJ grant programs comply with applicable federal civil rights laws. In reviewing DVS's general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR examined how the Division used the following four tools: (1) standard assurances; (2) onsite visits and other monitoring methods; (3) training programs and technical assistance; and (4) procedures for receiving, investigating, and resolving complaints alleging employment and services discrimination.

1. Standard Assurances

The OAG receives DOJ funds through the Violence Against Women Act (VAWA) and Victims of Crime Act (VOCA) programs, which in turn are managed by the DVS. In responding to OCR's data request, the Division noted that it promulgated rules and regulations for all subrecipients that outline the requirements for receiving federal funding and that include statements about complying with federal laws.

During its site visit, the OCR reviewed the fiscal year 2009 VAWA and VOCA contracts entered into between the Division and the Gillette Abuse Refuge Foundation, a DVS subrecipient. In each grant contract, the subrecipient agrees to the following nondiscrimination provision:

The Contractor shall comply with Presidential Executive Order 11246 entitled, "Equal Employment Opportunity," as amended by Presidential Executive Order 11375, and as supplemented in the Department of Labor Regulations (41 CFR Part 60), the Civil Rights Act of 1964 and Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105 *et seq.*), the Americans With Disability Act (ADA), 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975. The Contractor shall assure that no person is discriminated against based on the grounds of sex, race, age,

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religion, national origin or disability in connection with the performance of this Contract. The Contractor shall include the provisions of this section in every subcontract awarded in excess of ten thousand dollars (\$10,000) so that such provisions are binding on each subcontractor.

(Fiscal Year 2009 VAWA/VOCA Contracts For Services to Victims of Crime Between Division of Victim Services and Gillette Abuse Refuge Foundation at ¶ 8.P; *see also id.* at ¶ 8.K. (Entirety of Contract clause).) In addition, the subrecipient agrees that it “shall not discriminate against a qualified individual with a disability and shall comply with the American with Disabilities Act, P.L. 101-336, 42 U.S.C. § 12101 *et seq.*, and/or any properly promulgated rules and regulations related thereto.” (*Id.* ¶ 8.B.) The contracts also include a general requirement that the subrecipient “shall keep informed of and comply with all applicable federal . . . laws and federal . . . rules and regulations in the performance of this Contract.” (*Id.* ¶ 8.J.)

In several instances, these contracts are notable for what they do not address. As an initial matter, neither document references DOJ’s Equal Treatment Regulations. The contracts also do not require subrecipients to certify that they will take reasonable steps to provide meaningful access to their services to persons with limited English proficiency (LEP).¹

In addition, there appears to be some confusion about the extent to which certain subrecipients agree to specific assurances in exchange for VAWA or VOCA funds. In responding to OCR’s data request, the DVS provided a standard assurances document, entitled Certified Assurances and Special Provisions (Certified Assurances), which includes civil rights requirements and apparently is intended to be an attachment to every VAWA and VOCA grant contract. However, the contracts for these programs do not consistently reference or incorporate the assurances document. For example, while the Division suggested that subrecipients must agree to the conditions contained in the Certified Assurances document in order to receive funding, it does not appear as if the Gillette Abuse Refuge Foundation agreed to those conditions in the VAWA or VOCA contract before it received funding.

The contracts also ignore the applicable Equal Employment Opportunity Plan (EEOP) requirements governing subrecipients. The agreements do not require the subrecipient to submit a copy of an EEOP or an EEOP certification to the DVS so that the Division can monitor its subrecipients’ compliance with DOJ’s EEOP regulations at 28 C.F.R. § 42.301-.308. The contracts also do not notify subrecipients that they must submit to the OCR either an EEOP or the OJP’s Certification Form stating that they are eligible for a full or partial exemption from the EEOP requirement. *See* 28 C.F.R. § 42.305.

¹ The Division’s Funding Resource Manual emphasizes that subrecipient services must be accessible to all victims of crime, including those with limited English proficiency. (DVS FY 2010 (7/01/09 – 6/30/10) Funding Resource Manual at 10.)

These grant agreements also fail to establish any protocol for monitoring findings of discrimination. The contracts do not require subrecipients to forward to the OCR any finding of discrimination against the subrecipient by a federal or state court or federal or state administrative agency on the grounds of race, color, religion, national origin, sex, or disability. *See id.* § 42.204. Further, they do not require subrecipients to notify the DVS of any discrimination findings, which reduces the Division's ability to monitor subrecipient compliance with federal civil rights laws.

2. Onsite Visits and Other Monitoring Methods

Through its rules and regulations, the DVS notifies subrecipients that they will be subject to periodic onsite visits to ensure that they are in substantial compliance with applicable federal law. *See* Operation of Community Domestic Violence and Sexual Assault Shelter Programs, Rules & Regulations of DVS, ch. 9, § 12(c); Operation of Victim Service Providers Serving Victims of All Crimes Programs, ch. 11, § 9(b). There are three regional program managers that monitor all funding streams, including those awarded through the DOJ. These regional managers endeavor to conduct onsite visits and desk reviews of each subrecipient, alternating every year between these two monitoring methods. From the beginning of fiscal year 2008 through February 2009, the Division had completed nineteen desk reviews and approximately fifty onsite visits. During these audits, the DVS uses a checklist to monitor compliance of individual subrecipients with applicable legal and programmatic requirements. When Division staff members conduct onsite visits, they review subrecipient signed assurances, as well as program policies regarding internal and external non-discrimination, the Americans with Disabilities Act and accessibility, and sexual harassment. In addition, they elicit information about the extent to which subrecipients seek to offer services to underserved populations and special needs individuals.

3. Training and Technical Assistance

Each fiscal year, before entering into subrecipient contracts, the DVS conducts a three-hour mandatory meeting for all potential subrecipients. During that session, the Division covers federal and state requirements for compliance with federal and state guidelines regarding the receipt of funds, including equal employment opportunity requirements. However, the training does not address DOJ's Equal Treatment Regulations. The DVS requires subrecipient representatives to sign in, which allows the Division to ensure that all potential subrecipients attend the meeting. The DVS also meets with new subrecipient directors and program coordinators to provide them with orientation information about grant application and monitoring processes.

The DVS explained in its response to OCR's data requests that it offers ongoing technical assistance to subrecipients about various topics, depending on their needs. Program managers also conduct statewide technical assistance telephone calls after a Request for Proposal (RFP) is

released but before the application deadline. During OCR's site visit, the program staff members also explained that they make concerted efforts to provide ongoing technical assistance to subrecipients; in some cases, subrecipients seek assistance from the Division several times a day.

4. Complaint Procedures

In reviewing complaint procedures, the OCR evaluated the processes in place for individuals to pursue complaints of employment and services discrimination against the DVS and its subrecipients. The DVS has rules and regulations that govern how it responds to informal and formal employment and services discrimination complaints filed by subrecipient employees and beneficiaries, as well as to services complaints filed by DVS beneficiaries.² However, there is no mechanism in place for the Division to receive notice of any complaints of employment or services discrimination that are filed by subrecipient employees or beneficiaries in any forum.

Once a complaint is received, the Division sends a letter to the complainant explaining how it handled the information contained in the complaint, whom it contacted, and what steps, if any, it took. The Division also gives complainants the contact information for the appropriate federal office if they want to pursue their concerns in that alternate forum. Under the procedures for handling informal complaints, a complainant may file an oral or a written complaint with the DVS, although the director may elect not to investigate an oral complaint. The Division investigates all written informal complaints and seeks to resolve such complaints absent a formal hearing. After completing the investigation, the DVS notifies the subrecipient and complainant of its findings. If appropriate, the Division will specify the corrective action that the subrecipient should take and establish specific deadlines for completing those corrective measures. If the DVS cannot resolve the complaint informally, then a beneficiary or the DVS may file a formal complaint, which triggers a more elaborate fact-finding process. The procedures for formal investigations provide detailed guidance regarding pleading standards, hearing proceedings, and judicial review. While the Division's written procedures provide detailed guidance about the framework for investigating and resolving certain discrimination complaints, it is not clear how the DVS ensures that interested individuals are aware of its protocols.

In addition to the Division's internal procedures for handling informal and formal complaints, the State of Wyoming, through the Wyoming Department of Employment, Labor Standards office, has procedures in place to respond to employment discrimination complaints from the DVS and subrecipient employees. The Labor Standards office is responsible for enforcing the state's Fair Employment Practices Act, which prohibits employment discrimination on the basis of age, sex, race, creed, color, national origin, ancestry, or pregnancy. Wyo. Stat. Ann. § 27-9-

² In addition to its general complaint protocol, the Division also specifically requires that community domestic violence and sexual assault shelter providers develop grievance procedures for volunteers. *See* Evaluation of Community Domestic Violence and Sexual Assault Shelter Service Providers Strategic Plans, Rules & Regulations of DVS, ch. 8, § 6(b)(viii).

105 (2008). A DVS or subrecipient employee also can file a charge of employment discrimination with the Equal Employment Opportunity Commission (EEOC). While the Division automatically is apprised of any employment discrimination complaints that are filed against it, it has no mechanism in place to receive notice of employment discrimination complaints that a subrecipient employee files with the Labor Standards office or the EEOC.

B. Monitoring Compliance with Faith-Based Regulations

The purpose of the Equal Treatment Regulations is to ensure that “[r]eligious organizations are eligible, on the same basis as any other organization, to participate in any [Justice] Department program for which they are otherwise eligible.” 28 C.F.R. § 38.1(a). The Regulations prohibit the DOJ and DOJ funding recipients from discriminating either for or against an organization on the basis of the organization’s religious character or affiliation. *Id.* In evaluating DVS’s equitable treatment of faith-based organizations, the Compliance Review Report focuses on two issues: (1) the review process for making awards to applicant faith-based organizations; and (2) procedures for ensuring that funded faith-based organizations comply with applicable federal civil rights laws.

1. The Process for Making Awards to Applicant Faith-Based Organizations

The DVS uses its RFP, which is distributed on February 1 of each year, to announce the availability of VAWA and VOCA funds. The Division places ads regarding the application process in two statewide newspapers on three separate days. It also posts the RFP on its Web site and sends an e-mail to members of various stakeholder groups, including the local ministerial association and law enforcement, as well as various state courts, state councils, and state commissions. Approximately three weeks after the DVS releases the RFP, it holds two technical assistance telephone calls that encourage prospective applicants, including nonprofit groups, to obtain additional information about the application, the application process, and the Division’s Recipient Resource Manual.³ The DVS does not require nonprofit applicants to obtain federal tax exempt status.

The DVS coordinates the review and evaluation of all applications for VAWA and VOCA funds. The grant evaluation process for both funding streams is conducted by a committee of community stakeholders and typically includes representatives from state government (such as Wyoming Departments of Family Services, Adult Protective Services, Corrections, and Health), community groups (such as Wyoming Coalition Against Domestic Violence and Sexual Assault, Wyoming Citizen Review Panel, United Way of Laramie County, Wyoming Independent Living

³ The announcement provides guidelines for prospective subrecipients but does not specifically encourage faith-based organizations to apply. Moreover, the DVS does not conduct any formal outreach to faith-based organizations during the application solicitation process. However, the Recipient Resource Manual, which is available on the Division’s Web site and is referenced in the RFP, addresses faith-based organizations.

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Rehabilitation, and Prevent Child Abuse Wyoming), professional associations (such as Wyoming Bar Foundation and Wyoming Press Association), domestic violence and victim witness service providers, and law enforcement. The DVS director, deputy director, and program managers participate in the committee meetings, although they lack voting rights.

Approximately eight to ten teams of two individuals review grant applications and provide summary reports to the full committee. At that point, the committee recommends whether to fund or not to fund each application. Relatively few applications are zero funded. Instead, the DVS generally seeks to provide some level of funding to applicants, even if they receive less grant support than they requested. Next, the committee may reduce funding for applications that are deficient if they, for instance, include incorrect arithmetic or fail to specify clear objectives. Finally, if there still are insufficient funds for the approved programs, the committee makes an across-the-board percentage funding reduction.

Once the committee makes its decisions, the DVS sends award letters to the successful applicants. The award notices provide information to applicants about the amount of the award under each funded program, the strengths of their application, and any areas that need improvement. The Division also notifies recipients that, in order to receive the grant contract, they must provide revised budgets that are consistent with the amount of the awarded funds and resolve any additional problems that the committee noted during the application review process.

2. Procedures for Ensuring that Faith-Based Organizations Comply with Applicable Civil Rights Laws

For fiscal years 2006 and 2007, the DVS did not receive any applications from faith-based organizations for VAWA or VOCA funding. Most recently, in 2004, the DVS provided funding to an individual to sponsor a faith-based seminar at a church regarding child sexual abuse. The Division awarded the subrecipient funding through a VOCA mini-grant program, which is no longer available. In connection with the award, the DVS asked for assurances from the individual that attendees would not be required to participate in prayer or to adopt specific religious beliefs. The program was open to the public. The individual has not applied for subsequent grant funding, although she receives e-mails from the DVS regarding funding opportunities.

II. Recommendations

The DVS already has in place a number of procedures for monitoring the civil rights compliance of its subrecipients. To strengthen the Division's monitoring efforts and its inclusion of faith-based organizations in the grant funding process, the OCR offers the following four recommendations: (1) modify the civil rights/nondiscrimination provisions in its standard grant contract; (2) refine its compliance checklist; (3) refine its training to subrecipients regarding their obligations to comply with federal civil rights laws; and (4) refine its complaint procedures.

A. Modify the Civil Rights/Nondiscrimination Provisions in Grant Assurances, Agreements, and Conditions

The OCR recommends that the DVS ensure that all DOJ subrecipients agree to grant contracts that accurately reflect their federal civil rights obligations. To that end, the DVS should incorporate, at a minimum, the following language in all DOJ subrecipient contracts, regardless of the amount of federal financial assistance at issue:

It will comply (and will require any subgrantees or contractors to comply) with any applicable statutorily-imposed nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d); the Victims of Crime Act (42 U.S.C. § 10604(e)); the Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12131-34); the Education Amendments of 1972 (20 U.S.C. §§ 1681, 1683, 1685-86); the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07); Ex. Order 13279 (equal protection of the laws for faith-based and community organizations); and 28 C.F.R. pt. 38 (U.S. Department of Justice Equal Treatment for Faith-Based Organizations).

In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs and to the Division of Victim Services (DVS).

It will provide an Equal Employment Opportunity Plan (EEOP) to the Office for Civil Rights, Office of Justice Programs and the DVS, if required to maintain one; otherwise, it will provide a certification to the Office for Civil Rights, Office of Justice Programs and the DVS that it has a current EEOP on file, if required to maintain one. For grantee agencies receiving less than \$25,000; or grantee agencies with less than 50 employees, regardless of the amount of the award, no EEOP is required.

Information about civil rights obligations of grantees can be found at <http://www.ojp.usdoj.gov/ocr/>.

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The Division also should include a provision requiring subrecipients to certify that they will provide meaningful access to their programs and activities to LEP persons. In June of 2002, the DOJ published guidance for its financial aid recipients and state subrecipients about taking reasonable steps to provide meaningful access to programs and activities for LEP persons in accordance with Title VI and the Safe Streets Act. *See* Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (June 18, 2002) (DOJ Guidance).

Finally, the Division also may wish to add a sentence stating that in accordance with federal civil rights laws, the subrecipient shall not retaliate against individuals for taking action or participating in action to secure rights protected by these laws.

B. Refine Compliance Checklist and Conduct Routine Monitoring of All VAWA STOP Subrecipients

The DVS is to be commended for its efforts to monitor subrecipients through onsite visits and desk reviews, as well as for its use of a compliance checklist. As part of its responsibility to monitor the compliance of subrecipients with applicable federal civil rights laws, the DVS should refine its checklist to ensure that it evaluates the various civil rights requirements that apply to recipients of federal funding (e.g., whether the subrecipient has an EEOP on file or has sent one to the OCR for review; whether the subrecipient has findings of discrimination to report to the OAG or the OCR; whether the subrecipient has posted nondiscrimination notices as required by section 504 of the Rehabilitation Act; whether the subrecipient has a grievance procedure and a designated coordinator as required by section 504 of the Rehabilitation Act; and whether the subrecipient is taking reasonable steps to provide meaningful access to programs and activities for LEP persons). Additionally, the checklist should include questions that evaluate whether the subrecipient is complying with DOJ's Equal Treatment Regulations, including the prohibitions against using federal funds to engage in inherently religious activities and discriminating against program beneficiaries on the basis of religion. In an effort to assist the DCF in refining its checklist, the OCR has prepared a sample Federal Civil Rights Compliance Checklist, which is enclosed for the Department's review.

C. Refine Training to Subrecipients Regarding Their Obligations to Comply with Federal Civil Rights Laws

While the DVS is making a concerted effort to provide training to applicants and subrecipients, it should refine its training program to ensure that subrecipients are aware of all of their obligations under applicable federal civil rights laws, such as (a) to provide meaningful access to programs and activities for LEP individuals and (b) to have procedures in place to receive and evaluate complaints alleging discrimination from employees and beneficiaries. The OCR is available to provide the DVS with technical assistance in revising its civil rights training programs.

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D. Refine Complaint Procedures

As previously noted, the Wyoming Department of Employment, Labor Standards office provides a forum for resolving employment discrimination complaints filed by DVS and subrecipient employees. Nonetheless, the DVS has an obligation as a recipient of federal financial assistance to have in place a policy that comprehensively addresses how it responds to employment and services discrimination complaints that it receives from its own employees and beneficiaries, as well as from the employees and beneficiaries of subrecipients. While the Division has several procedures in place regarding its response to certain discrimination complaints, it also should develop a complaint policy that includes the following elements as applied to subrecipient complaints: designating a coordinator who is responsible for processing discrimination complaints; a process for receiving, evaluating, and forwarding discrimination complaints to the appropriate investigative agency (e.g., the EEOC, the Wyoming Department of Employment, Labor Standards office, or the OCR); providing written notice to DVS subrecipients about the complaint process; and training DVS program staff about their obligation to refer allegations of discrimination in subrecipient programs to DVS's complaint coordinator as soon as the alleged discrimination comes to their attention. The DVS should also inform subrecipients that beneficiaries of their programs have the right to file a discrimination complaint with the OCR. Information about the applicable laws, complaint forms, and OCR's investigative process is available at OCR's Web site, <http://www.ojp.usdoj.gov/ocr/crc>.

III. Conclusion

We find that the OAG should implement OCR's recommendations to ensure substantial compliance with the federal civil rights laws that the OCR enforces. On request, the OCR is available to provide technical assistance to the DVS in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, we ask that a responsible OAG official contact Attorney Advisor Christopher Zubowicz to develop a timeline and goals for implementing OCR's recommendations.**

Thank you for your cooperation and the assistance of your staff during the compliance review process. If you have any questions, please contact Mr. Zubowicz at 202.305.9012.

Sincerely,

/S/

Michael L. Alston
Director